

**BUILD OPERATE TRANSFER AGREEMENT
Hamilton County Parking Garage**

This Build Operate Transfer Agreement (Hamilton County Parking Garage) (the "Agreement") is executed this ____ day of February, 2020, by and between _____, an Indiana limited liability company (the "Developer"), and Hamilton County, Indiana (the "County").

Recitals

WHEREAS, pursuant to Indiana Code 5-23 *et seq.*, the County issued a request for proposals for the design, building, operation, and finance of the Project (as defined herein);

WHEREAS, the County selected the Developer as the preferred bidder to deliver the Project pursuant to that process; and

WHEREAS, the County and the Developer desire to enter into this Agreement to formalize the terms and conditions upon which the Project shall be delivered.

Agreement

1. Defined Terms.

Bonds shall mean surety bonds provided by Developer for the construction of the Project, specifically: (a) a performance bond in the amount of 50% of the Project Budget; and (b) payment bond for 100% of the Project Budget; less any contingency and/or construction management or developer fees.

Books and Records shall mean all of the books and records pertaining to: (a) the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement and the Construction Contract; and (b) the operating of the completed Project during the Operating Period.

Change Order shall mean a change order executed by Developer and County finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

City Approvals shall mean the approvals required by the City of Noblesville, Indiana, its agencies, or its departments related to the design and construction of the Project, including but not limited to zoning approvals.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing shall mean the closing with respect to the execution of the Closing Documents described in Section 4.

Closing Date shall mean the date of the Closing.

Construction Contract shall mean the contract executed by and between Developer (or Developer's assignee under Section 14 of this Agreement) and the Contractor for construction of the Project in accordance with the Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

Construction Drawings shall mean construction drawings consistent with the Design Development Documents and the Laws.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Contractor shall mean Garmong Construction Services.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Design Development Documents shall mean reasonably detailed design development drawings that are consistent with the Schematic Design Drawings and the Laws.

Disbursement Agreement shall mean a "Disbursement Agreement" to be executed at Closing by Developer and County or its designee, as "Disbursement Agent", for the purposes of making Disbursement Payments to Developer.

Disbursement Payments shall mean the payments made by County to Developer on a periodic basis for the purposes of reimbursing Developer for the Project Costs pursuant to the Disbursement Agreement.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; and (b) any other documents contemplated by this Agreement to be executed in connection with the Project.

Easement Agreement shall mean an agreement pursuant to which County grants to Developer a temporary easement to construct the Project on the Project Site in accordance with the terms and conditions of this Agreement.

Event of Default shall have the meaning set forth in Subsection 12(a).

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by County pursuant to Section 7.

Final Inspection shall mean an inspection of the Project by County after substantial completion thereof.

Final Payment shall mean County's final payment of Developer's Project Costs, less ____ percent of any unspent construction contingencies within the Project Budget, within 30 days of the Substantial Completion Date.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers).

Incurred Costs shall mean the costs and expenses incurred by Developer in connection with complying with the terms and conditions of this Agreement in the amount of \$60,000.00.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Latent Defect shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by County during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from County that identifies Material Defects with respect to the Project discovered by County during a Permitted Inspection or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is 60 days after the Substantial Completion Date; or (b) that is specified in a written notice delivered by County to Developer.

Parking Equipment shall mean the equipment necessary to direct, control, reserve, and/or charge for parking within the Project, including but not limited to barrier gate arms, pay stations or boxes, or card readers.

Permitted Change shall mean any change proposed by Developer to the Final Plans of the Project, so long as such change: (a) is not inconsistent with the corresponding with the Schematic Design Drawings or Design Development Documents approved by County for the Project; (b) does not result in the Final Plans containing structurally flawed elements; (c) is in conformity with the Laws, and (d) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule for the Project.

Permitted Inspection shall mean an inspection by County of any item or component of the Project when reasonably deemed to be necessary or appropriate by County.

Plan Refinement Process shall mean the process set forth in Section 7 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to County the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedules is attached hereto as Exhibit B.

Project shall mean a four-story structure of approximately 400 structured parking spaces, together with related improvements, to be constructed on the Project Site, which structure will be used as a public parking garage.

Project Approvals shall mean the approvals required by County, its agencies, or its departments related to the design and construction of the Project, including but not limited to plan commission approvals.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer and/or County; (c) the costs incurred in connection with the Closing (to the extent that such costs are not included in the Documentation Costs); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; (f) the

developer fee to be paid by County to Developer; and (g) a construction management fee to be paid to Contractor.

Project Site shall mean that certain real estate located in the County and commonly known as _____, as generally shown on Exhibit A as the "Project Site".

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which County shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Schematic Design Drawings shall mean detailed schematic design drawings that are consistent with and the Laws.

Substantial Completion Date shall mean the date on which Developer delivers to County a copy of an architect's certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially affect the use of the Project for its intended use.

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, fiber and/or internet access, and other utility services.

2. General Obligations.

(a) **Project.** Subject to the terms and conditions of this Agreement, Developer shall: (i) construct the Project on the Project Site; and (ii) convey the Project to County upon expiration of the Operating Period.

(b) **Payments.** Subject to the terms and conditions of this Agreement and the Disbursement Agreement, County shall pay Developer the Project Costs via the Disbursement Payments and the Final Payment.

(c) **Utility Availability.** County, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that County, at its cost and expense, shall make any improvements outside the Project Site that are necessary for County to satisfy the foregoing obligation with respect to Utility Services.

(d) **Required Permit and Project Approvals Fees.** County shall: (i) waive all application and other fees assessed for the Required Permits and/or Project Approvals; or (ii) where possible to reduce the potential fee assessed, complete an application as the "Owner" of the Project; for the Required Permits, the City Approvals, and/or Project Approvals.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before _____, 2020. The Closing Date shall be established mutually by Developer and County, and the Closing shall take place at such location as Developer and County mutually agree.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered, including:

(a) the Easement Agreement;

(b) the Disbursement Agreement;

(c) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or County, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or County of its obligations hereunder and under the foregoing documents, have been authorized by Developer or County, as the case may be; and

(d) such other customary documents and instruments as either party reasonably may request in connection with the Closing.

5. Conditions.

(a) **Mutual.** Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and County to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has obtained, or Developer and County are satisfied that Developer will be able to obtain, all Required Permits, Project Approvals, and City Approvals.

(ii) Either: (A) the Final Plans have been completed and the Project Budget has been established pursuant to the Plan Refinement Process; or (B) Developer and County, each in the exercise of its reasonable discretion, are satisfied: (1) with the progress of the Plan Refinement Process; and (2) that the Final Plans and the Project Budget will be completed in a timely manner following the Closing.

(iii) Developer and County have agreed to the form and substance of each of the Disbursement Agreement and the Easement Agreement.

(b) **Developer.** In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has determined that no test, inspection, examination, study, investigation, or title search of or with respect to the Project Site establishes that there are conditions that would interfere with, or prohibit, the construction of the Project, including but not limited to environmental or geotechnical conditions, in accordance with the terms and conditions of this Agreement.

(ii) There is no continuing breach by County of this Agreement, and all of the representations and warranties of County set forth in Section 6 are true and accurate in all respects.

(c) **County.** In addition to the conditions set forth in Subsection 5(a), the obligation of County to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by Developer of this Agreement; and (ii) all of the representations and warranties of Developer set forth in Section 6 are true and accurate in all respects.

(d) **Condition Failure.** If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 12.

Notwithstanding anything to the contrary set forth herein, Developer and County shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations and Warranties. Each of Developer and County represents and warrants to the other that: (a) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (b) it has the power to enter into this Agreement and to perform its obligations hereunder; (c) it has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (d) this Agreement, once executed, is its legal, valid, and binding obligation. In addition to the foregoing: (a) Developer represents and warrants to County that it is a domestic corporation organized and existing under the laws of the State of Indiana; and (b) County represents and warrants to Developer that: (i) to the best of its knowledge, there is not now, and there has not been, any contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, except as may be disclosed in any property information provided by County to Developer; and (ii) it is a public body organized and existing under the laws of the State of Indiana.

7. Plan Refinement Process.

(a) **Approvals.** In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to County for its approval the Schematic Design Drawings, the Design Development Documents, and the Construction Schedule. Within ten days after County receives the Schematic Design Drawings, Design Development Documents, or Construction Schedule, County shall deliver to Developer written notice of approval or rejection of the submitted drawings, documents, or schedule; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that County is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Schematic Design Drawings, the Design Development Documents, or the Construction Schedule, such Schematic Design Drawings, Design Development Documents, or Construction Schedule, respectively, shall be final, subject to modifications by Change Orders.

(b) **Construction Drawings.** In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to County for its review the Construction Drawings with respect to each Construction Trade. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(c) **Re-submissions.** If, at any stage of the Plan Refinement Process, County rejects any drawings, documents, or schedules, then, within ten days after Developer receives notice from County of such rejection, Developer shall revise, and submit to County, the applicable drawings, documents, or schedules. Within ten days after County receives the resubmitted drawings, documents, or schedules, County shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or party that County is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans subject to modifications by Change Orders.

(d) **Final Plans.** Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(e) **Budget/Costs.**

(i) At the appropriate points during the Plan Refinement Process, as determined by Developer and County, Developer shall: (A) deliver the Project

Budget to County for its review and approval; and (B) make such adjustments to the Project Budget as are determined by Developer and County to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process; provided that Developer shall not be obligated to make adjustments to the Project Budget that would cause the Project Costs to exceed \$9,500,000.00, unless County agrees that County will pay all amounts in excess of \$9,500,000.00 as such amounts are incurred;

(ii) Upon approval of the Project Budget: (A) the Project Budget shall be the final budget with respect to construction of the Project, subject to modifications by Change Orders.

(iii) Notwithstanding any other provision of this Agreement, the Project Budget shall not include any costs related to the mitigation or remediation of environmental conditions existing on, in, or at the Project Site prior to the commencement of construction by Developer. In the event that Developer identifies any potential environmental issues at the Project Site, Developer shall: (A) immediately cease construction activity; and (B) provide written notice to County of such environmental condition. County shall, within thirty days of such written notice, commence remediation of such environmental condition. The cost of such remediation shall be at the sole expense of the County. The Substantial Completion Date shall be extended on a day for day basis for every day construction is delayed by County remediation activity.

(iv) The Developer and County agree that neither the Parking Equipment nor Security Equipment or camera shall be included within the initial Project Budget established under Section 7(e)(i). Any addition of Parking Equipment shall be made via Change Order in accordance with the terms and conditions of this Agreement. However, the conduit and power availability shall be included in the initial budget.

(f) Sales Tax.

(i) As soon as reasonably is practicable, Developer shall submit the Construction Contract to County for its review.

(ii) Promptly after receipt of the Construction Contract, County shall deliver the Sales Tax Exemption Form to: (A) Developer; and (B) the Contractor, at the notice address set forth in the Construction Contract.

(iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer (or the Contractor, pursuant to the terms and conditions of the Construction Contract) promptly shall notify County in writing. From and after receipt of the foregoing notice, County shall provide such cooperation, information, and assistance as Developer and/or the Contractor reasonably shall request.

(iv) County shall indemnify and hold harmless Developer, the Contractor, and the members, directors, officers, and employees of Developer and the Contractor, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct,

install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of County under this clause shall survive the termination of this Agreement.

(g) As-Built Plans. Within ____ days of the Substantial Completion Date, Developer shall submit the final, redlined, "as-built" plans as prepared by Developer to County.

8. Change Orders.

(a) Developer Changes. If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to County for review and approval, together with an estimate of any increases to the approved Project Budget that would result from the change proposed in the Change Order Request. Within ten days after County receives the Change Order Request, County shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) County shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for County to reject a Change Order Request if the change proposed in the Change Order Request would result in an increase in the Project Budget; and (iii) if County approves a Change Order Request for a change that would result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the amount of such increase shall be paid by County as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase. If County rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that County is rejecting; and (ii) include the specific basis for such rejection. If County approves a Change Order Request, then Developer and County shall execute a Change Order.

(b) County Changes.

(i) If County desires to make any changes to the Final Plans, then County shall submit a Change Order Request to Developer for review and approval. Within five business days after Developer receives the Change Order Request, Developer shall deliver to County written notice stating whether the change proposed in the Change Order Request would result in an increase in the Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(i) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the Project Budget, then, within five business days after delivery of such notice, Developer shall deliver to County written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five business days after receipt of such notice, County shall provide written notice to Developer as to whether County would like to withdraw the Change Order Request. If County does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to County written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request, then Developer and County shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the increase in the Project Budget shall be paid by County as such costs are incurred; provided that, in no

event shall Developer have any obligations with respect to the payment of the amount of such increase

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of County with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

9. Construction.

(a) Permits. Prior to commencing construction of the Project, Developer shall obtain and submit to County for its review the Required Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits.

(c) Operation. Developer shall operate the completed Project during the Operating Period; provided that County shall be responsible for the direct payment of all costs and expenses incurred in connection with such operation and Developer shall have no obligation to make any payment related to the operation of the Project during the Operating Period.

(d) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. County and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. Nothing contained in this Section 9(d) shall be construed as making the Books and Records public records under the applicable Laws.

(e) Bonds. Prior to commencement of construction of the Project and until the Project has: (i) received its certificate of occupancy; and (ii) Developer has demonstrated that all outstanding payments have been made to subcontractors performing work for the Project, subject to amounts withheld in dispute or in retainage; Developer shall provide County with the Bonds.

10. Inspection.

(a) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, County may perform a Permitted Inspection. If applicable after a Permitted Inspection, County shall deliver a Non-Compliance Notice to Developer.

(b) Final Inspection. Developer shall deliver to County a written request for the Final Inspection of the Project at least five business days prior to the Substantial Completion Date. On or before the later of the date that is five business days after: (i) receipt by County of such request; or (ii) the Substantial Completion Date; County shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(c); County shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five business days after County conducts the Final Inspection, Developer and

County shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.

(c) Non-Compliance. If County delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section, then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or have been deemed to have been accepted, by County. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by County.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by County pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) General.

(i) In connection with any Inspection pursuant to this Section, County shall: (A) comply with all health and safety rules of which County has been informed that have been established for personnel present on the construction site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, County during any Inspection.

(ii) An acceptance, or deemed acceptance, by County pursuant to this Section shall not mean that County has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

11. Insurance. During construction of the Project and terminating upon the Substantial Completion Date, Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit C. Each such policy shall be written by a company reasonably acceptable to County, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to County at least 30 days in advance. The policies of insurance required by this Section to be maintained by Developer shall name County as an additional insured. Developer shall deliver to County certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. In addition to the insurance provided above, the Developer shall cause its design subcontractor, RQAW Corporation (RQAW), to maintain the policies of insurance reflected on the certificate attached hereto as Exhibit C. However, the Certificate of RQAW shall include professional liability insurance of Five Million Dollars (\$5,000,000) per claim and Five Million Dollars (\$5,000,000) in the aggregate and that coverage shall continue to provide such insurance for a period of two (2) years after completion of the Project. Each such policy shall be written by a company reasonably acceptable to County, and RQAW, shall provide notice of any intended modification to, or cancellation of, such policy to County at least 30 days in advance. The policies of insurance required by this Section to be maintained by RQAW shall name County as an additional insured. RQAW shall deliver to County certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

12. Default.

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, attorneys' fees and court costs), together with interest at the rate of 12% per annum.

(c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

13. Mutual Indemnification.

(a) Developer. Developer shall indemnify and hold harmless County from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or wilful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(b) County. County shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or wilful misconduct of County or any party acting by, under, through, or on behalf of County; or (ii) the breach by County of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

14. Assignment. Neither County nor Developer shall assign this Agreement without the prior written consent of the other party, provided that: (a) without the prior written approval of Developer, County may assign this Agreement to another agency or instrumentality of the County that is legally able to perform the obligations of the County hereunder; and (b) without the prior written approval of County, Developer may

assign this Agreement to any entity in which the principals of the Developer hold a controlling interest. Notwithstanding any assignment permitted under this Section, Developer or County, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Developer or County, as the case may be, from such performance.

15. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at _____, 5988 North Michigan Road, Indianapolis, IN 46228, Attn: Paul Okeson, with a copy to: Adam W. Collins, Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to County at _____. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

16. Expenses. If County terminates this Agreement pursuant to Section 5 for any reason other than a continuing Event of Default by Developer, then County shall reimburse Developer for the Incurred Costs. Each of Developer and County acknowledges that Developer and County have negotiated the amount of the Incurred Costs to be paid by County in the event of a termination of this Agreement pursuant to Section 5. To receive reimbursement for the Incurred Costs as permitted by this Section, Developer shall submit to County an invoice therefor and County shall reimburse Developer for the amount set forth on such invoice in the ordinary course of its business, but in all events within 30 days after receipt of such invoice. In connection with any reimbursement by County pursuant to this Section, Developer shall assign to County its right, title, and interest in and to the Final Plans and the materials obtained by it in connection with the due diligence undertaken by Developer, if any, which rights, title, and interest shall not prohibit County from using the Final Plans and materials in connection with the construction of the Project.

17. Authority. Each undersigned person executing this Agreement on behalf of Developer and County represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and County, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and County, respectively.

18. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

19. Taxes. County shall be solely responsible for, and shall pay and discharge when due all taxes, assessments, and other governmental charges that are lawfully imposed upon the Project Site, the Project, or any party thereof.

20. Miscellaneous. Subject to Section 14, this Agreement shall inure to the benefit of, and be binding upon, Developer and County, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and County with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and County. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, Developer and County have executed this Project Agreement as of the date set forth above.

DEVELOPER:

_____, an Indiana limited liability company

By: _____

Printed: _____

Title: _____

County:

Hamilton County, Indiana

By: _____

Printed: _____

Title: _____

The south half of the City block bounded on the north by Wayne Street, the south by Clinton Street, the east by 9th Street and the west by 8th Street, all of which is located within the City of Noblesville, Hamilton County, Indiana, and is also more particularly described as Lots 5, 6, 3 and 4 in Block Three of the original plat of the City of Noblesville, Indiana.

Client#: 1370452

CHGAR

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/26/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Svcs, LLC CL 500 Wabash Ave. Terre Haute, IN 47807 812 514-5031		CONTACT NAME: Jim Brown PHONE (A/C, No, Ext): 812 514-5031 FAX (A/C, No): 812 232-0926 E-MAIL ADDRESS: jim.brown@usi.com	
INSURED C. H. Garmong & Son, Inc. 3050 Poplar St. Terre Haute, IN 47803		INSURER(S) AFFORDING COVERAGE INSURER A: Amerisure Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 19488	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	CPP20508821401	12/31/2019	12/31/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/POP AGG \$2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	CA20508811301	12/31/2019	12/31/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB <input checked="" type="checkbox"/> OCCUR CLAIMS-MADE <input checked="" type="checkbox"/> RETENTION \$0	X	X	CU20508831302	12/31/2019	12/31/2020	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	WC205088416	12/31/2019	12/31/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Rented/Leased Equipment			IM20746960902	12/31/2019	12/31/2020	\$200,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

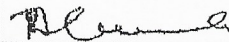
CERTIFICATE HOLDER

CANCELLATION

Hamilton County
1 Hamilton County Square
Suite 157
Noblesville, IN 46060

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ACORD 25 (2016/03) 1 of 1
#S28028706/M27337203

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HAVZP

EXHIBIT B



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/13/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Indiana, LLC 11595 N Meridian St, Suite 250 Carmel IN 46032		CONTACT NAME: Vicki Rude CIC PHONE (A/C, No, Ext): (317) 574-5000 FAX (A/C, No): (317) 471-1700 E-MAIL ADDRESS: vrude@bbindy.com													
INSURED RQAW Corporation Luke Roseboom 8770 North Street, Suite 110 Fishers IN 46038		INSURER(S) AFFORDING COVERAGE <table border="1"><tr><td>INSURER A: Harleysville Preferred Insurance Company</td><td>NAIC # 35696</td></tr><tr><td>INSURER B: Harleysville Insurance Company</td><td>23582</td></tr><tr><td>INSURER C: Harleysville Worcester Insurance Company</td><td>26182</td></tr><tr><td>INSURER D: Arch Insurance Company</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>		INSURER A: Harleysville Preferred Insurance Company	NAIC # 35696	INSURER B: Harleysville Insurance Company	23582	INSURER C: Harleysville Worcester Insurance Company	26182	INSURER D: Arch Insurance Company		INSURER E:		INSURER F:	
INSURER A: Harleysville Preferred Insurance Company	NAIC # 35696														
INSURER B: Harleysville Insurance Company	23582														
INSURER C: Harleysville Worcester Insurance Company	26182														
INSURER D: Arch Insurance Company															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** 2019/20 MASTER**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			BOP0000008475AC	11/15/2019	11/15/2020	EACH OCCURRENCE \$ 1,000,000
			DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000				
			MED EXP (Any one person) \$ 10,000				
			PERSONAL & ADV INJURY \$ 1,000,000				
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA0000008490AC	11/15/2019	11/15/2020	GENERAL AGGREGATE \$ 3,000,000
			PRODUCTS - COMP/OP AGG \$ 3,000,000				
			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000				
			BODILY INJURY (Per person) \$				
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			CMB0000008526AC	11/15/2019	11/15/2020	BODILY INJURY (Per accident) \$
			PROPERTY DAMAGE (Per accident) \$				
			EACH OCCURRENCE \$ 5,000,000				
			AGGREGATE \$ 5,000,000				
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC0000008481AC	11/15/2019	11/15/2020	PER STATUTE <input checked="" type="checkbox"/> OTH-ER <input type="checkbox"/>
			E.L. EACH ACCIDENT \$ 1,000,000				
			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
			E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
D	PROFESSIONAL LIABILITY			7816116C	11/15/2019	11/15/2020	PER CLAIM \$2,000,000
			PER AGG \$2,000,000				
							DEDUCTIBLE \$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

For information purposes only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE